

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

K.H., by and through her parents, MICHAEL AND
ALANY HELMANTOLER,

Plaintiff,

v.

MT. DIABLO UNIFIED SCHOOL DISTRICT,

Defendant.

No. C 04-05400 SI

**ORDER GRANTING DEFENDANT'S
MOTION TO INTRODUCE REBUTTAL
EVIDENCE**

By letter briefs,¹ the parties bring before the Court a dispute over whether defendant may introduce additional evidence in this appeal from a decision of the California Special Education Hearing Office. For the following reasons, the Court GRANTS defendant's request.

In an October 19, 2005, Order, the Court granted plaintiffs' request to supplement the administrative record in this matter. The Court permitted plaintiffs to introduce declarations and testimony from Carina M. Grandison, Ph.D., Merrilee P. McBride, M.Ed., and Judith Paton, M.A. Defendant now moves to supplement the record with the testimony of Dena Zacharia. Zacharia will provide testimony, as well as documentary evidence from the American Speech-Language-Hearing Association, to rebut the additional evidence plaintiffs intend to introduce.

As discussed in its October 19, 2005, Order, this Court has broad discretion to accept additional evidence when the proffered evidence is not cumulative of the administrative record. *See Ojai Unified Sch. Dist. v. Jackson*, 4 F.3d 1467, 1472-73 (9th Cir. 1993). Defendant has informed the Court that the additional

¹Defendant brought this motion by letter brief dated October 24, 2005. Plaintiffs responded in a letter brief dated October 27, 2005.

1 evidence it seeks to introduce is non-cumulative, and will only be used to rebut the supplemental evidence
2 offered by plaintiffs. The Court believes defendant should be afforded the opportunity to address plaintiffs'
3 additional evidence. Defendant's motion is therefore GRANTED.

4
5 **CONCLUSION**

6 For the foregoing reasons and for good cause shown, the Court hereby GRANTS defendant's motion
7 to introduce rebuttal evidence.

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9 **IT IS SO ORDERED.**

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11 Dated: November 4, 2005

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13 SUSAN ILLSTON
14 United States District Judge
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